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April 28, 1997

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APR 28 1997

Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CS Docket No.95-184/
IB Docket No. 95-59
CS Docket No. 96-83
Notice of Ex Parte Communications

Dear Mr. Caton:

During the months of February through April, 1997, Larry Chapman, Senior Vice President, Strategic Initiatives, DIRECTV, Inc. (and formerly, Senior Vice President of Special Markets and Distribution); Merrill S. Spiegel of Hughes Electronics Corporation, the parent company of DIRECTV, Inc.; and I, as counsel for DIRECTV, Inc. have had various communications with the Commissioners and staff members identified below, either in person or by telephone, concerning the Commission's inside wiring proceeding. This letter provides information about the substance of those communications.

- **The Technology.** Mr. Chapman described the physical process of wiring a multiple dwelling unit building (an "MDU") to provide DIRECTV service to the MDU's residents. The attached material, copies of which were distributed at some of the meetings, explains two methods by which DIRECTV can wire an MDU—the "Dual 500" and the "Single 1000." The Dual 500 requires the use of

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two lines down the riser, while the Single 1000 uses only a single wire but requires translation of the frequencies used for the DIRECTV transmission. In addition to these two methods, Mr. Chapman noted that there may be other technologies under development that would allow for all the DIRECTV frequencies to be transmitted on a single 500 MHz band; such a technology, however, would require additional equipment. DIRECTV needs to have the flexibility to decide which method of wiring an MDU is the most appropriate in each case.

- **Ability to Share Inside Wiring.** We explained that DIRECTV's business plan is generally to serve as a complement to the incumbent cable operator, noting that DIRECTV customers frequently retain their existing cable service, reserving DIRECTV for the principal household television set. Moreover, cable and DIRECTV can simultaneously share the "home run" wiring that extends from the cable lockbox to the individual subscriber unit without interference or impairment. Cable uses up to 750 MHz of spectrum, while the DIRECTV signal is carried from 950 - 1450 MHz. Sharing the riser cable is more problematical, but can occasionally be done depending on the technology, the quality of the cable, and the configuration of the system.
- **Exclusive Contracts.** DIRECTV receives calls each week from both MDU residents and MDU owners and managers, asking whether DIRECTV can provide service to their building. Approximately 40% of the inquiries, however, are from those unable to allow DIRECTV into their buildings because of exclusive dealing clauses in the building owner's contract with the existing franchised cable company. While we acknowledged that not all cable operators regularly use exclusive dealing clauses, we identified a number of cable operators that do so, and noted that many of DIRECTV's MDU sales staff come from the cable industry where they witnessed (and benefited from) the use of these clauses.
- **Cable's Exclusive Contracts Impair Competition.** Due to these exclusive dealing arrangements, DIRECTV and other alternative video providers are foreclosed from competition in a significant portion of the MDU marketplace for MDU services. We argued that the Commission should strike down cable's exclusive dealing arrangements in order to facilitate the ability of all residents to receive over-the-air programming, citing the mandate of Section 207 of the Telecommunications Act of 1996 as one source of authority for such an action. We noted that the Commission had already struck down a number of other private contractual provisions pursuant to the mandate of Section 207.

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- **Alternative Video Services Providers Do Not Have Market Power.** We understand that many cable operators now agree that exclusive cable contracts should be struck down. They often go further, however, and assert that alternative video providers, such as DBS operators, should not be allowed to enter into exclusive dealing arrangements with MDU owners. We argued that it is only cable that has market power, and that only cable's exclusives should be struck down. For a new, competitive entrant, a period of exclusivity in order to recoup the significant capital investment required to wire a building can actually enhance competition by facilitating entry. Because of the "complementary to cable" strategy that DIRECTV employs, as mentioned above, DIRECTV has a need for exclusivity only as against other alternative video providers, not the incumbent cable operator. In a related vein, we noted that DIRECTV typically engages a "system operator," who constructs the MDU infrastructure and facilitates the sale, installation and maintenance of DSS systems, taking the economic risk in dealing with MDU owners. These "system operators" generally have contracts with DIRECTV that provide them with exclusive rights for five years (vis-à-vis DIRECTV), and they have advised us that they find it necessary to obtain exclusive arrangements with building owners for seven to ten years in order to be able to take the risk of the installation investment.
- **Cost.** The cost of wiring an MDU is considerable. Depending upon the number of units in the building over which the total installation costs may be amortized, the cost of installing a common DIRECTV antenna on a rooftop and the necessary wiring inside the building to the cable lockbox can range from \$75 to \$300. This number does not include the cost of duplicating the home run. To replicate that wiring would add substantially to the total cost on a per-unit basis.
- **Inability to Access the Interior of MDU Premises.** In many cases, cost is not the problem. DIRECTV has found that many building owners are unwilling to allow a second wire out of concerns for aesthetics and convenience. They will not allow DIRECTV to install home run wiring in their buildings because of the disruption and inconvenience that it would cause to residents. Installation of the home run requires stringing wires along hallways and through walls in order to access the current demarcation point, 12 inches outside of where the cable wire enters the subscriber's unit. Owners are frequently unwilling to allow anyone to inconvenience residents while walls, ceilings, and floors are torn up and later repainted, repapered, and recarpeted.
- **Demarcation Points.** DIRECTV has previously advocated the establishment of a number of additional broadband demarcation points. We advocated, at a minimum, the establishment of a demarcation point at the existing cable lockbox

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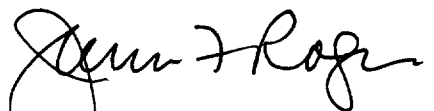
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or other location where wiring is first dedicated to an individual unit, so that alternate providers will be able to access the home run wiring. In that fashion, a resident could easily elect to change to a competitive service. The requirement of a "neutral" lockbox, advocated by some cable companies, is entirely unnecessary and would be far more invasive of a building owner's property than giving competitive providers access to the existing lockbox.

- **Relationship to OTARD.** We also discussed the relationship between the OTARD proceeding, IB Docket No. 95-59, and the inside wiring proceeding. On reconsideration in the OTARD proceeding, the Commission needs to extend the protection of the rules to all MDU residents, even those who do not have an ownership interest in their unit, and those whose units do not have an exclusive use area suitable for DBS reception. A successful result in the OTARD proceeding, however, will not solve the entire problem, for it does not address issues beyond the MDU rooftop. Appropriate rules in the inside wiring proceeding are needed to ensure that competitive providers can effectively reach each resident's unit.

Very truly yours,



James F. Rogers
of LATHAM & WATKINS

cc: Commissioner Rachelle B. Chong, and Suzanne Toller, Commissioner Chong's Office
Commissioner Susan Ness, and David Sidall and Anita Wallgren, Commissioner Ness's Office
Julius Genachowski, Chief Counsel, Chairman Hundt's Office
Marsha MacBride, Commissioner James H. Quello's Office
Meredith J. Jones, Chief, Cable Services Bureau
John E. Logan, Deputy Chief, Cable Services Bureau
Barbara S. Esbin, Associate Bureau Chief, Cable Services Bureau
JoAnn Lucanik, Chief, Policy & Rules Division, Cable Services Bureau
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Lawrence A. Walke, Policy & Rules Division, Cable Services Bureau
Meryl Icove, Legal Advisor, Cable Services Bureau
Michael Lance, Senior Engineer, Cable Services Bureau

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Steve Bailey, General Counsel's Office

John Stern, Assistant Bureau Chief, International Bureau

Rosalee Chiara, International Bureau

Donna Jean Ward, International Bureau

DIRECTV into MDU's



- **Environment is now favorable for introduction of alternate video services into MDU's**
- **Dramatically reduced set-top box price allows for rental of box**
- **Consumers and property managers are demanding alternative services by name**
- **DIRECTV is committed to serving MDU segment**
- **Over \$75M to be expended in 1997**

MDU Approaches



- **DIRECTV supports rights of MDU occupants to install antennas in exclusive use areas**
- **Best solution, however, is master antenna approach**
 - **Serves all of a building's residents**
 - **Preserves esthetics**
 - **Allows for more efficient economics**

MDU Approaches



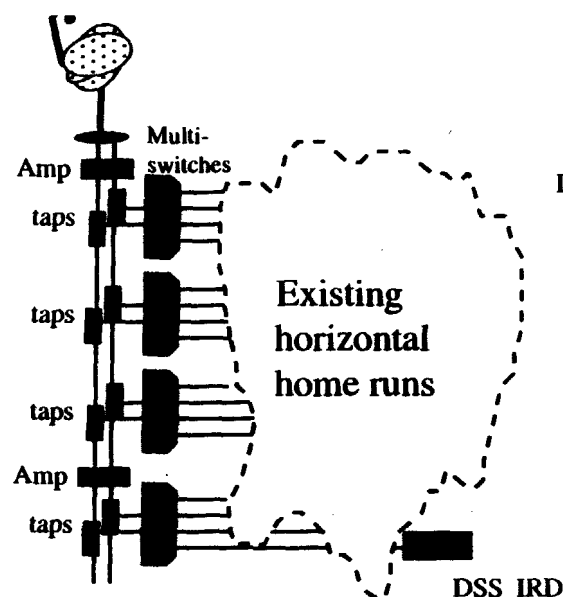
- **Retrofitting buildings for digital video services is costly**
 - **\$75-\$300 per unit passed**
- **Access to home run wiring (under reasonable terms) is essential**
- **There are various technical solutions**
 - **Multi-switch**
 - **Single 1000**
 - **New technologies**

Technology Approaches

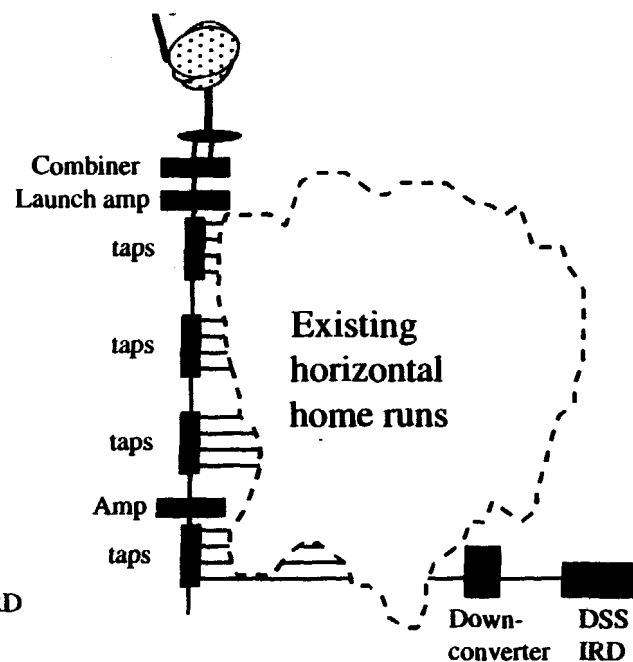
(for Direct To Home in MDUs)



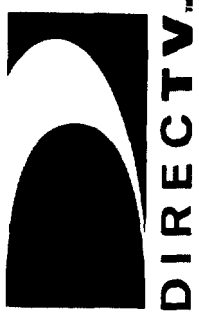
Dual 500



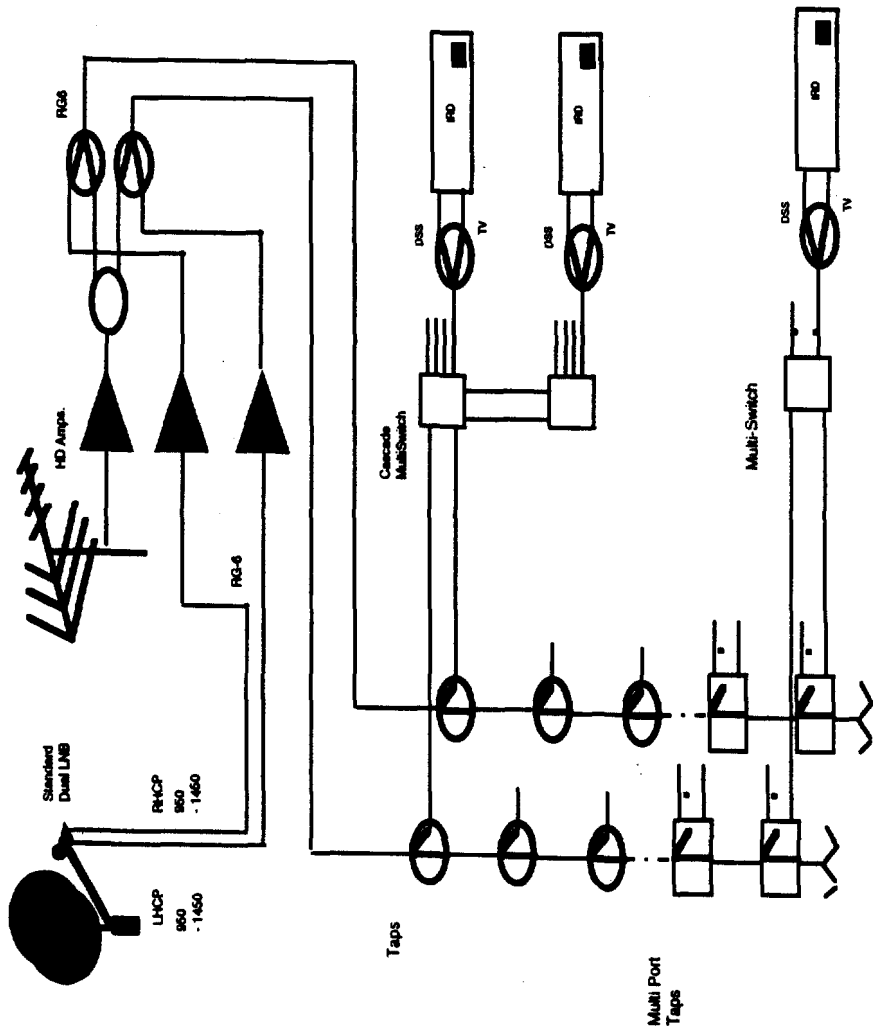
Single 1000



Dual 500



Dual-500 Reference Model



Single 1000

